

United States  
Court of Appeals  
for the Ninth Circuit

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EDWIN B. CHILLINGWORTH,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

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Transcript of Record

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Appeal from the Supreme Court for the  
Territory of Hawaii

FILED

NOV 23 1948

PAUL P. O'BRIEN,  
CLERK



No. 12043

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United States  
Court of Appeals  
for the Ninth Circuit

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# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

## PAGE

Affidavit of Prejudice, dated Jan. 28, 1948.... 28

## Appeal:

Assignment of Errors on (Filed Oct. 27, 1947) 31

Assignment of Errors on (Filed July 2, 1948) 43

Bond for Costs on..... 44

Certificate of Circuit Court Clerk to Record  
on ..... 27

Certificate of Supreme Court Clerk to Record  
on ..... 51

Citation on ..... 47

Direction to Prepare Transcript of Evidence  
on ..... 20

Notice of ..... 19

Order Allowing Appeal and Fixing Amount  
of Bond on ..... 46

Petition for ..... 41

Praecipe on ..... 49

Statement of Points and Designation of Rec-  
ord on (USCA)..... 53

Order Extending Time to File Record on.... 50

Application for Writ of Error, filed Oct. 27, 1947 .....	30
Assignment of Errors:	
Filed Oct. 27, 1947.....	31
Filed July 2, 1948.....	43
Bond for Costs on Appeal, filed July 2, 1948..	44
Certificate to Transcript of Record on Appeal:	
Circuit Court Clerk.....	27
Supreme Court Clerk.....	51
Citation on Appeal, filed July 2, 1948.....	47
Decision and Judgment, filed July 30, 1947....	21
Decision of the Supreme Court, filed June 28, 1948 .....	34
Designation of Record, Statement of Points and (USCA) .....	53
Direction to Prepare Transcript of Evidence..	20
Indictment, filed Feb. 20, 1946.....	2
Indictment, filed Oct. 17, 1946.....	7
Judgment, filed Feb. 15, 1947.....	9
Judgment and Sentence, dated May 12, 1947...	15

Judgment on Writ of Error, filed June 29, 1948	37
Minutes of Third Circuit Court, June 16, 1947	
—July 24, 1947.....	25
Minutes of the Proceedings before the Supreme Court, Territory of Hawaii, June 16, 1948...	40
Motion for Revocation of Probation and Sus- pension of Sentence, filed June 10, 1947.....	12
Motion to Set Bond, filed Aug. 3, 1947.....	18
Names and Addresses of Attorneys.....	1
Notice of Appeal, filed Aug. 4, 1947.....	19
Notice of Judgment on Writ of Error, filed June 29, 1948.....	38
Notice of Motion, filed June 10, 1947.....	17
Order Allowing Appeal and Fixing Amount of Bond, filed July 2, 1948.....	46
Order Extending Time to File Record on Ap- peal .....	50
Order Recalling Mandate, filed July 3, 1948....	39
Petition for Appeal, filed July 2, 1948.....	41
Praecipe, filed July 24, 1948.....	49
Statement of Points and Designation of Record on Appeal (USCA) .....	53
Writ of Error, filed Oct. 27, 1947.....	33





## NAMES AND ADDRESSES OF ATTORNEYS

RALPH F. MATSUMURA, ESQ.,

301 Merchandise Mart Building,  
Honolulu, T. H.,

Attorney for plaintiff in error.

TOM OKINO, ESQ.,

County Attorney, Hawaii County,  
and Deputy Attorney General,  
Hilo, Hawaii, T. H.,

Attorney for defendant in error.

In the Circuit Court of the Third Circuit,  
Territory of Hawaii

January Term 1946

No. 2323

'TERRITORY OF HAWAII

vs.

EDWIN B. CHILLINGWORTH,

Defendant.

Indictment for Violation of Section 11240, R.L.H.  
1945, Embezzlement.

### INDICTMENT

The Grand Jury of the Third Circuit of the  
Territory of Hawaii do present that

### COUNT I.

Edwin B. Chillingworth at Hilo, District of South Hilo, in the County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 20th day of April, 1945, having theretofore been employed by Katherine Leanes to collect and receive moneys due the said Katherine Leanes, and having then and there received in his, the said Edwin B. Chillingworth's possession, control, custody and keeping a thing of value, to wit, five hundred and fifty and no/100 dollars (\$550.00), lawful money of the United States of America, a more particular description of which money is unknown to the Grand Jurors, by the consent and authority of the said Katherine Leanes, did, without the consent and against the

will of the owner thereof entitled thereto, the said moneys then and there feloniously embezzle and fraudulently convert and dispose of to his own use and benefit and did then and thereby commit the crime of Embezzlement, contrary to Section 11240, Revised Laws of Hawaii 1945, and contrary to the form of the statute in such case made and provided [8\*]

And in order to charge the said Edwin B. Chillingworth with the crime of Embezzlement in the first degree, arising from the same criminal acts and transactions as hereinabove set forth in the first count, in the alternative, in different form and count to meet the proof, it is further charged that

## COUNT II.

Edwin B. Chillingworth at Hilo, District of South Hilo, in the County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 20th day of April 1945, being then and there by Katherine Leanes entrusted with and with the consent of said Katherine Leanes, having then and there in his possession, control, custody and keeping a thing of value, to wit, four hundred fifty and no/100 dollars (\$450.00), lawful money of the United States of America, belonging to the said Katherine Leanes, a more particular description of which money is unknown to the Grand Jurors, which said money he, the said Edwin B. Chillingworth, had theretofore collected with the consent and authority of said Katherine

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

Leanes, did feloniously embezzle and fraudulently convert and dispose of said money to his own use and benefit, without the consent and against the will of said Katherine Leanes, who was then and there the owner of said money, and did then and there and thereby commit the crime of Embezzlement contrary to Section 11240, Revised Laws of Hawaii 1945, and contrary to the form of the statute in such case made and provided.

And in order to charge the said Edwin B. Chillingworth with the crime of Embezzlement in the first degree, arising from the same criminal acts and transactions as hereinabove set forth in the first Count, in the alternative, in different form and count to meet the proof, it is further charged that

### COUNT III.

Edwin B. Chillingworth at Hilo, District of South Hilo, in the County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 20th day of April 1945, being then and there by L. Brabo entrusted with and with the consent of said L. Brabo, having then and there in his possession, control, custody and keeping a thing of value, to wit, one hundred dollars (\$100.00), lawful money of the United States of America, belonging to the said L. Brabo, a more particular description [9] of which money is unknown to the Grand Jurors, which said money he, the said Edwin B. Chillingworth, had theretofore collected with the consent and authority of said

L. Brabo, did feloniously embezzle and fraudulently convert and dispose of said money to his own use and benefit, without the consent and against the will of said L. Brabo, who was then and there the owner of said money, and did then and there and thereby commit the crime of Embezzlement contrary to Section 11240, Revised Laws of Hawaii 1945, and contrary to the form of the statute in such case made and provided.

And in order to set forth the unlawful and felonious acts of the said Edwin B. Chillingworth, the Grand Jurors aforesaid do further say and present that

#### COUNT IV.

Edwin B. Chillingworth at Hilo, District of South Hilo, in the County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 20th day of April 1945, having theretofore been employed by Leonardo Leanes and others to collect and receive moneys due the said Leonardo Leanes and others, and having then and there received in his, the said Edwin B. Chillingworth's, possession, control, custody and keeping anything of value, to wit, three hundred seven and 37/100 dollars (\$307.37), lawful money of the United States of America, a more particular description of which money is to the Grand Jurors unknown, by the consent and authority of the said Leonardo Leanes and others, did, without the consent and against the will of the owners thereof entitled thereto, the said moneys then and there

feloniously embezzle and fraudulently convert and dispose of to his own use and benefit and did then and there and thereby commit the crime of Embezzlement, contrary to Section 11240, Revised Laws of Hawaii 1945, and contrary to the form of the statute in such case made and provided.

And in order to set forth the unlawful and felonious acts of the [10] said Edwin B. Chillingworth, the Grand Jurors aforesaid do further say and present that

#### COUNT V.

Edwin B. Chillingworth at Hilo, District of South Hilo, in the County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 5th day of December 1945, having theretofore been employed by Leonardo Leanes and others to collect and receive moneys due the said Leonardo Leanes and others, and having then and there received in his, the said Edwin B. Chillingworth's, possession, control, custody and keeping a thing of value, to wit, two hundred fifty-two dollars (\$252.00), lawful money of the United States of America, a more particular description of which money is unknown to the Grand Jurors, by the consent and authority of the said Leonardo Leanes and others, did, without the consent and against the will of the owners thereof entitled thereto, the said moneys then and there feloniously embezzle and fraudulently convert and dispose of to his own use and benefit and did then and there and thereby commit the crime of Embezzlement,



contrary to Section 11240, Revised Laws of Hawaii 1945, and contrary to the form of the statute in such case made and provided.

A true bill found this 19th day of February, 1946.

/s/ W. B. MACFARLANE,  
Foreman of the Grand Jury.

/s/ TOM OKINO,  
County Attorney, County of Hawaii, and Deputy  
Attorney General.

[Endorsed]: Filed Feb. 20, 1946. [11]

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[Title of Circuit Court and Cause, Cr. No. 2413]

### INDICTMENT

The Grand Jury of the . . . . Judicial Circuit of the Territory of Hawaii do present that Edwin B. Chillingworth at Hilo, District of South Hilo, in the County of Hawaii, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 5th day of December 1945, having theretofore been employed as agent by Leonardo Leanes to collect and receive moneys due the said Leonardo Leanes and others, and having then and there received in his, the said Edwin B. Chillingworth's, possession, control, custody and keeping a thing of value, to wit, two hundred fifty-two dollars (\$252.00), lawful money of the United States of America, belonging to the said Leonardo Leanes and others, a more particular description of which

money is unknown to the Grand Jurors, by the consent and authority of the said Leonardo Leanes and others, did, without the consent and against the will of the said Leonardo Leanes and others, who were then and there the owners of said money, then and there feloniously embezzle and fraudulently convert and dispose of said money to his own use and benefit and did then and there and thereby commit the crime of Embezzlement, contrary to Section 11240, Revised Laws of Hawaii 1945, and [13] contrary to the form of the statute in such case made and provided.

A true bill found this 16th day of October, 1946.

/s/ W. B. MACFARLANE,

Foreman of the Grand Jury.

/s/ TOM OKINO,

County Attorney, County of Hawaii, and Deputy Attorney General.

[Endorsed]: Filed Oct. 17, 1946. [14]



In the Circuit Court of the Third Circuit,  
Territory of Hawaii

No. 2413

TERRITORY OF HAWAII

vs.

EDWIN B. CHILLINGWORTH,

Defendant.

Criminal Indictment in 1 Count for Violation of  
Section 11240, R.L.H. 1945.

JUDGMENT OF THE COURT

On the 12th day of November, 1946, came the County Attorney of the County of Hawaii acting as Deputy Attorney General of the Territory of Hawaii, and the defendant, Edwin B. Chillingworth, appearing in proper person, and by his counsel, O. P. Soares, Esq., and having been asked what was his plea, he replied "Not Guilty," and

That thereafter, to wit, on the 12th day of November, 1946, said defendant appeared in this Court with his attorney and withdrew his plea of "Not Guilty" theretofore pleaded by said defendant to the indictment in the above-entitled cause; that thereafter, to wit, on said 12th day of November, 1946, after having been advised by his counsel, said defendant pleaded "Guilty," and

The defendant having entered his plea of guilty of the offense charged in the indictment in the above-entitled cause, to wit, in that he did at Hilo, District of South Hilo, in the County of Hawaii,

Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 5th day of December, 1945, having theretofore been employed as agent by Leonardo Leanes to collect and receive moneys due the said Leonardo Leanes and others, and having then and there received [16] in his, the said Edwin B. Chillingworth's possession, control, custody and keeping a thing of value, to wit, two hundred fifty-two dollars (\$252.00), lawful money of the United States of America, belonging to the said Leonardo Leanes and others, a more particular description of which money was unknown to the Grand Jurors, by the consent and authority of the said Leonardo Leanes and others, without the consent and against the will of the said Leonardo Leanes and others, who were then and there the owners of said money, then and there feloniously embezzle and fraudulently convert and dispose of said money to his own use and benefit and did then and there and thereby commit the crime of Embezzlement, and the defendant having been asked whether he had anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court,

It is by the Court ordered and adjudged that the defendant, Edwin B. Chillingworth, is found guilty of said offense and he is hereby sentenced to imprisonment at hard labor at and in the Oahu Penitentiary, Territory of Hawaii, for a period of not more than ten (10) years and to pay a fine of One Hundred Dollars (\$100.00); the execution of that

portion of the sentence imposing imprisonment is hereby suspended and the said defendant is hereby placed upon probation for a period of five (5) years, under the terms of probation set forth in that Minute Order of this Court, "In Re Adult Probation," dated April 16, 1940, said term of probation to run concurrently with that imposed by this Court upon said defendant in Criminal Case No. 2323, offense of Embezzlement; and that as special terms of probation, (1) the defendant is hereby ordered to pay to the Clerk of the Third Circuit Court the fine of \$100.00 at [17] the rate of \$10.00 per month payable after the fine in Criminal Case No. 2323 is paid in full; (2) that said defendant shall, within the next thirty (30) days and without further action on the part of the Attorney General of the Territory of Hawaii, submit to the Supreme Court of the Territory of Hawaii for cancellation his license to act as a district court practitioner in the Territory; (3) that said defendant shall not engage in the work of being a private detective, either for pay or without, during the period of probation; (4) and that in the matter of restitution the defendant shall take care of the same in accordance with the order provided in the companion case, Criminal No. 2323.

Witness the Honorable Martin Pence, Judge of the Circuit Court of the Third Circuit, Territory of Hawaii, at Hilo, Hawaii, this 16th day of January, A. D. 1947.

(Seal)      /s/ MARTIN PENCE.

[Endorsed]: Filed Feb. 15, 1947. [18]

[Title of Circuit Court and Cause, C. Nos. 2323,  
2413.]

Violation Section 11240. R.L.H. 1945

MOTION FOR REVOCATION OF PROBATION  
AND SUSPENSION OF SENTENCE

Comes now the Territory of Hawaii, by Albert M. Felix, Deputy County Attorney of the County of Hawaii, and Deputy Attorney General of the Territory of Hawaii, and moves this Honorable Court that the probation granted to Edwin B. Chillingworth, the above-named probationer, on the 16th day of January, 1947, be revoked and set aside and that sentence as heretofore imposed be executed.

This Motion is based upon the records and files of this case and upon the affidavit attached hereto and made a part hereof, to which reference is hereby made.

Dated at Hilo, Hawaii, this 10th day of June, 1947.

TERRITORY OF HAWAII.

By /s/ ALBERT M. FELIX,  
Deputy County Attorney, County of Hawaii, and  
Deputy Attorney General, Territory of Hawaii.

AFFIDAVIT

Territory of Hawaii,  
County of Hawaii—ss.

Albert M. Felix, being first duly sworn, on his oath deposes and says:

That he is a Deputy County Attorney of the County of Hawaii, Territory of Hawaii;

That on the 12th day of November, 1946, as to Criminal No. 2323, Edwin B. Chillingworth pleaded guilty to Counts II and III of said indictment, to wit, violation of Section 11240, R.L.H. 1945, Embezzlement; that on the 16th day of January, 1947, said defendant was sentenced to imprisonment at hard labor at and in the Oahu Penitentiary, Territory of Hawaii, for a period of not more than ten (10) years and to pay a fine of Fifty Dollars (\$50.00); however, the execution of that portion of said sentence ordering imprisonment was suspended and the defendant was placed upon probation for a period of five (5) years under the terms of probation set forth in that Minute Order of this Court, "In Re Adult Probation," dated April 16, 1940, and upon the special terms of probation enumerated in the judgment of the Court dated January 16, 1947, in said Criminal Number 2323, on file in this Court;

And as to Criminal Number 2413, Edwin B. Chillingworth pleaded guilty in said Court to the violation Section 11240, R.L.H. 1945, Embezzlement; that on the 16th day of January, 1947, said defendant was sentenced to imprisonment at hard labor at and in the Oahu Penitentiary, Territory of Hawaii, for a period of not more than ten (10) years and to pay a fine of One Hundred Dollars (\$100.00); however, the execution [21] of that portion of said sentence ordering imprisonment was suspended and the defendant was placed on probation for a period of five (5) years under the terms of probation set forth in that Minute Order of this

Court, "In Re Adult Probation," dated April 16, 1940, said term of probation to run concurrently with that imposed by this Court upon said defendant in Criminal Number 2323, and upon the special terms of probation enumerated in the Judgment of the Court dated January 16, 1947, in said Criminal No. 2413 on file in this Court;

That subsequent to being placed upon probation, to wit, on the 20th day of April, 1947, said probationer was charged with the violation of the provisions of Section 11382, R.L.H. 1945, in that he did then and there slaughter eleven heads of cattle for the purpose of human consumption and fail to retain the hides for a period of two weeks after the killing of said cattle; that the said probationer was thereupon found guilty of said offense on the 12th day of May, 1947, by the District Magistrate of the District Court of South Hilo and ordered to pay a fine of \$100.00, cost remitted, the judgment being satisfied.

Further affiant sayeth not.

Dated at Hilo, Hawaii, this 10th day of June, 1947.

/s/ ALBERT M. FELIX.

Subscribed and sworn to before me this 10th day of June, 1947.

(Seal) /s/ TOM OKINO,

Notary Public, Third Circuit, Territory of Hawaii.

My commission expires May 10, 1951.

[Endorsed]: Filed June 10, 1947. [22]



In the District Court of South Hilo, County and  
Territory of Hawaii

Crim. No. 29712-1510

TERRITORY OF HAWAII

vs.

EDWIN CHILLINGWORTH,

Defendant.

RETENTION OF CATTLE HIDE  
JUDGMENT AND SENTENCE

I am satisfied that from the evidence in the case, that this meat enterprise in Puna was entered into as a joint enterprise between the defendant Chillingworth, Kauwe and Ahana. I think there has been a good deal of what you might call coalition of stories as were told here in Court this morning as a result of collaboration of defendants and Mr. Ahana. I have no doubt but what there was that joint enterprise provision between the three men when they went and got this permission from Mr. Lyman to slaughter cattle on his land. I have no doubt that when these cattle were slaughtered, they were slaughtered under the direction of Mr. Chillingworth, one of the owners and one of the members of the joint enterprise. I have no doubt in my mind but that the employee Makuakane was under the direction of Mr. Chillingworth at the time.

The evidence leaves it clear that when these animals were sold, some of them, the hides were not retained for the period mandated by the Statute.

The suggestion is made that because of the fact that the Statute refers to a bullock, therefore, they could go out and do as they pleased with [24] cows and heifers or bulls at that time.

I think that I am convinced that the defendant, Chillingworth, actively participated in the catching and slaughtering of these cattle; participated as a member of the joint enterprise and as an owner when the cattle were caught and slaughtered. I don't believe that Mr. Kauwe is in the same category. I don't think that he participated in that. I don't think he was actively engaged in it and I think he can not come within the description of the party involved under Section 11380.

I therefore find the defendant, Isaac Kauwe, not guilty and he is discharged in No. 1509. I find the defendant, Edwin Chillingworth, in 1510, guilty as charged and he is sentenced to pay a fine of \$100.00, cost remitted; stand committed until the fine is paid.

### CERTIFICATE

This is to certify that the foregoing and attached two pages of typewritten matter constitute a full, true and correct Transcript of the Judgment and Sentence of the Court in the above entitled cause on the 12th day of May, 1947.

/s/ ELAINE A. L. YAP,  
2nd Asst. Clerk & Reporter, District Court of  
South Hilo. [25]



In the Circuit Court of the Third Circuit,  
Territory of Hawaii

C. Nos. 2323 & 2413

TERRITORY OF HAWAII

vs.

EDWIN B. CHILLINGWORTH,

A Probationer.

Violation of Section 11240, R.L.H. 1945

NOTICE OF MOTION

To Edwin B. Chillingworth:

You are hereby notified that the foregoing Motion will be presented for allowance in the above-entitled Court and cause on Monday, June 16, 1947, at 10:00 a.m., or as soon thereafter as the matter can be heard.

/s/ ALBERT M. FELIX,

Deputy County Attorney, County of Hawaii, and  
Deputy Attorney General, Territory of Hawaii.

## CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion on Edwin B. Chillingworth by personally delivering the same to him in Hilo, County and Territory of Hawaii, at the hour of 9:25 a.m. on June 12, 1947.

/s/ DELPHINE NOBRIGA,  
Police Officer.

Circuit Court, Third Circuit, returned at 9:35 o'clock a.m. June 12, 1947. /s/ W. R. Whittington, Assistant Clerk.

[Endorsed]: Filed June 10, 1947. [27]

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[Title of Circuit Court and Cause.]

## MOTION TO SET BOND

Comes now Albert M. Felix, Deputy County Attorney of the County of Hawaii and Deputy Attorney General of the Territory of Hawaii, and hereby moves this Honorable Court that the bond in the above-entitled cause be set at One Thousand Dollars (\$1000.00).

Dated at Hilo, Hawaii, this 8th day of August, 1947.

TERRITORY OF HAWAII,

By /s/ A. M. FELIX,  
Deputy County Attorney, County of Hawaii, and  
Deputy Attorney General, Territory of Hawaii.

NOTICE OF MOTION

To Calvin McGregor, Esq., Attorney for the Defendant:

You are hereby notified that the foregoing Motion will be heard on Wednesday, August 13, 1947, at 11:00 o'clock a.m., or as soon thereafter as counsel can be heard.

/s/ A. M. FELIX. [29]

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion on Calvin McGregor, Esq., attorney for the defendant, by mailing the same, duly stamped at the United States Post Office at Hilo, Hawaii, on the 8th day of August, 1947, addressed to his office at 210 Hawaiian Trust Building, Honolulu, Hawaii.

/s/ A. M. FELIX.

[Endorsed]: Filed Aug. 3, 1947. [30]

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[Title of Circuit Court and Cause.]

NOTICE OF APPEAL

Comes now Edwin B. Chillingworth, Defendant herein, by his attorneys King & McGregor, and hereby gives notice of his intention to appeal by writ of error to the Supreme Court from the decision and judgment of the Circuit Judge in the above entitled matter, in revoking the probation heretofore granted to defendant in Criminal Cases

2323 and 2413 in the above-entitled court, terminating the suspension of sentence relative to imprisonment in said cases, committing the said defendant to prison.

Dated: Honolulu, Hawaii, August 4th, 1947.

EDWIN B. CHILLINGWORTH,  
Defendant,

By KING & MCGREGOR,

By /s/ CALVIN C. MCGREGOR,  
His Attorneys.

[Endorsed]: Filed Aug. 4, 1947. [32]

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[Title of Circuit Court and Cause.]

DIRECTION TO PREPARE TRANSCRIPT  
OF EVIDENCE

To Annabelle Kekuna, Official Reporter, Third Circuit Court:

Upon application of the Plaintiff-in-Error above named therefor, you are hereby directed to prepare in the regular order of cases tried, a transcript of the evidence taken upon the trial of the above entitled cause upon satisfactory security being furnished.

Dated: Hilo, Hawaii, T. H., this 14th day of August, 1947.

(Seal)           /s/ MARTIN PENCE,  
Judge of the Above Entitled  
Court.

[Endorsed]: Filed Aug. 14, 1947. [34]

In the Circuit Court of the Third Circuit,  
Territory of Hawaii

C. Nos. 2323 & 2413

TERRITORY OF HAWAII

vs.

EDWIN B. CHILLINGWORTH,

Defendant.

Violation of Section 11240, R.L.H. 1945

DECISION AND JUDGMENT

This matter came on for hearing on the 24th day of July, 1947, after defendant had been given from June 16, 1947 to July 24, 1947 in order to secure counsel and prepare himself for a hearing on the Motion to Revoke Probation heretofore granted him. He was ably represented in Court by Calvin McGregor, Esq.

The facts proved by Deputy Attorney General Felix showed, beyond any doubt, that the defendant, Edwin B. Chillingworth, has violated this Court's Rule 8, relative to probation, viz., that he should at all times obey the laws of the Territory of Hawaii. The facts proved, showed to my satisfaction, beyond a reasonable doubt, that the defendant in his capacity as a member of "a joint enterprise" had engaged in cattle slaughtering business in Puna and that he had not retained the hides of the cattle slaughtered by him and his associates. The evidence also clearly showed that he had been charged with the violation of Section

11382, R.L.H. 1945, for this and that he had pled not guilty to said charge. His defense in the South Hilo District Court, from the record, was [36] that he was simply an employee of one Leslie Chang, also known as Leslie Ahana, and that the responsibility was not his but Ahana's. He was nevertheless found guilty as charged. Before me is the decision of Judge Irwin on that point, and I quote: "I have no doubt but what there was that joint enterprise provision between the three men when they went and got this permission from Mr. Lyman to slaughter cattle on his land. I have no doubt that when these cattle were slaughtered, they were slaughtered under the direction of Mr. Chillingworth, one of the owners and one of the members of the joint enterprise."

When the defendant took the stand on his own behalf in order to explain away his conviction, *supra*, and give reasons why his probation should not be revoked for such admitted violation of the Territorial law, the defendant again insisted that he was but an employee of Chang at the time. This insistence—in the face of the decision of Judge Irwin—detracted from the strength of Chillingworth's testimony. By the same token, the character of the witness Chang, also known as Ahana, and the evasiveness of his answers likewise detracted from the evidence which was attempted to be given by Chang in Chillingworth's favor.

The Court noted that no appeal was perfected by Chillingworth from the decision of Judge Irwin and there arises from that fact and inference that



the defendant was satisfied with the justice of that decision.

If Chillingworth were a stupid, ignorant defendant, then such stupidity and ignorance would be considered by the Court in determining the willfulness of the admitted violation of one of the terms of probation.

As above indicated, the violation in the instant case, [37] at first glance, would appear to be a violation resulting from omission rather than commission. When it is noted that the defendant has, by his own statement, been practicing as a district court practitioner for some 19 or 20 years and when one reviews the prior record of the defendant, the claimed negligent omission which resulted in his conviction in the District court taken on a different picture and, by fair inference, from the record, becomes one of commission, viz., another act of willful disregard of the mandates of the law.

At the time that I originally sentenced the defendant and placed him on probation on January 16, 1947, I said, "I wish to advise you now that the probation administrator or her assistants will give you a full and clear and detailed understanding of what your obligations are, and I advise you now that the sword of Damocles hanging over your head held there by a thread and that thread which holds the sword—that is to say the imprisonment in the penitentiary on Oahu—is the absolute and honest fulfillment of the terms of probation, and the living by you in this community or wherever you may be permitted to go, if you are permitted to depart herefrom—to continue and repeat, the living by

you in this Community of an honest and honorable and respected life.

“Your record is one of slipperiness or evasions and, like the slug that crawls across the garden path, it has left a slimy trail behind. I don’t want any more such slimy trail during the next five years.”

There were two complaints made to the probation administrator concerning the defendant’s actions prior to his being brought before me on the instant charge. From her testimony, the probation administrator, after investigation, [38] decided that the complaints could not be substantiated sufficiently to charge the defendant with violation of probation. That such complaints were made, however, was part of “the slimy trail” which the defendant seems to leave behind wherever he goes. The instant charge is simply more of that slimy trail. For my part, I believe that the trail should end. I believe the defendant has been given sufficient opportunity to prove himself in this community. I feel he has failed in his obligation to the community. I feel that his conviction of the charge above referred to is sufficient to have broken the “thread.”

For the violation of Rule 8 of the terms of probation heretofore granted to the defendant, the probation heretofore granted is revoked.

It is therefore ordered, adjudged and decreed: That in Criminal case No. 2323, the probation heretofore granted being now revoked, the suspension of the execution of that portion of the sentence



relative to imprisonment heretofore decreed by that Judgment dated January 16, 1947, is hereby terminated and the defendant is ordered committed to prison in accordance with said Judgment; and in Criminal case No. 2413, the probation heretofore granted being now revoked, the suspension of the execution of that portion of the sentence relative to imprisonment heretofore decreed by that Judgment dated January 16, 1947, is hereby terminated and the defendant is ordered committed to prison in accordance with said Judgment.

It is further ordered that such portions of the sentences relative to imprisonment shall run concurrently, but that such portions of the sentences relative to fines shall be cumulative. [39]

Let Mittimus issue on Wednesday, July 30, 1947, at 10:00 a.m. upon the sentences imposed.

Dated at Hilo, Hawaii, this 30th day of July, A.D. 1947.

(Seal)            /s/ MARTIN PENCE,  
                         Judge. [40]

[Endorsed]: Filed July 30, 1947.

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### MINUTES

Monday, June 16, 1947

Court convened at 10:07 a.m. with Judge Martin Pence, presiding. C. 2323 and C. 2413, Territory of Hawaii, Plaintiff vs. Edwin B. Chillingworth, Defendant. Motion for Revocation of Probation. Present: A. M. Felix, Deputy County Attorney, for the Plaintiff; the defendant in person. Mr. Chillingworth asked for a continuance of the matter.

The Court made a statement. Mr. Felix made a statement. The Court continued the cases to July 7, 1947 at 11:00 a.m.

Note on Calendar, Monday, July 7, 1947.

Passed to July 21, 1947 by request of the County Attorney.

Note on Calendar, Monday, July 21, 1947.

Passed to July 24, 1947 by request of Samuel King, Jr., Counsel for the dedendant.

Thursday, July 24, 1947.

Court convened at 8:28 a.m. with Judge Martin Pence, presiding. C. 2323 and C. 2413, Territory of Hawaii, Plaintiff vs. Edwin B. Chillingworth, Defendant. Motion for Revocation of Probation and Suspension of Sentence. Present: A. M. Felix, representing the Territory; Calvin McGregor, of King and McGregor, Counsel for Defendant. Mr. Felix made a statement, moving that defendant's probation be revoked because he had been found guilty of a misdemeanor in District Court; namely, failing to retain cattle hides for fourteen days. Etha B. Coulter sworn, then examined by Mr. McGregor on direct. Mr. Felix cross-examined witness. Redirect by Mr. McGregor. Recross by Mr. Felix. [41] Thursday, July 24, 1947, minutes continued.

Leslie Chang sworn, then examined by Mr. McGregor. Cross-examination by Mr. Felix. Redirect by Mr. McGregor. Court examined witness. Further redirect by Mr. McGregor.

Edwin B. Chillingworth sworn, then examined by Mr. McGregor. Probationer's Card was marked Defendant's Exhibit "1-i" for identification at 10:49 a.m. Marked Defendant's Exhibit "1" in evidence at 10:51 a.m. Mr. Felix cross-examined the witness. Defendant's Exhibit "1" withdrawn and returned to defendant.

Argument by Mr. McGregor. Argument by the Territory, was waived. Court took the matter under advisement; decision to be rendered within a week, at which time both attorneys would be notified.

[Endorsed]: Filed July 30, 1947.

[42]

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[Title of Circuit Court and Cause.]

#### CLERK'S CERTIFICATE

I, A. S. Carvalho, Chief Clerk of the Circuit Court of the Third Circuit, Territory of Hawaii, do hereby certify that the foregoing copies of documents in the above entitled cause are true, full and correct copies of the originals now on file in my office, with the exception of the Judgment and Sentence of the District Court of South Hilo, County of Hawaii, Territory of Hawaii, which is a copy of the same filed with and referred to in the Affidavit, a part of the Motion for Revocation of Probation and Suspension of Sentence, the same being specifically designated and enumerated as follows:

1. Indictment, Judgment of the Court, Motion

for Revocation of Probation and Suspension (Affidavit, Judgment and Sentence of the District Court of South Hilo and Notice of Motion), Notice of Appeal, Motion to Set Bond and Direction to prepare transcript of evidence:

2. Decision and Judgment on revocation of probation and suspension of sentence;

Pursuant to the Praecipe, the foregoing, together with the original Transcript of Evidence, the Clerk's Minutes, the Writ of Error and Return are transmitted herewith to the Clerk of the Supreme Court.

The Praecipe made reference to "All Exhibits". The only exhibit in the above entitled matter, Defendant's Exhibit "1", was withdrawn and returned to the defendant. (Refer to page 2 [43] of the Clerk's Minutes.)

Dated at Hilo, Hawaii, this 12th day of November, 1947.

(Seal)            /s/ A. S. CARVALHO,  
Chief Clerk.

[44]

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[Title of Circuit Court and Cause.]

## AFFIDAVIT OF PREJUDICE

Territory of Hawaii,  
City and County of Honolulu—ss.

Edwin B. Chillingworth, being first duly sworn, on oath deposes and says:

That he is the Defendant in the above entitled

cause; that the Honorable Martin Pence, Judge of the above entitled court, has a personal bias and prejudice against him, the said Defendant; that the facts and reasons for the belief that said judge has a bias and prejudice against him are:

(a) That the Honorable Judge Martin Pence has heretofore revoked his, the said Defendant's probation;

(b) That the Honorable Judge Martin Pence made unsubstantiated remarks with respect to the Defendant's character in open court and in a decision rendered in a prior case before his court;

That the Defendant requests that he be tried by or transferred to another Judge and there tried or otherwise disposed of.

/s/ EDWIN B. CHILLINGWORTH,

Subscribed and sworn to before me this 28th day of January, 1948.

(Seal) /s/ JEAN T. YAMODA,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires August 29, 1951. [46]

I hereby certify that I am counsel of record for the above named defendant and that the above and foregoing Affidavit is made in good faith.

/s/ RALPH F. MATSUMURA,  
Attorney.

[Endorsed]: Filed June 7, 1948.

[47]

In the Supreme Court of the Territory of Hawaii

No. 2687

TERRITORY OF HAWAII,

Defendant-in-error,

vs.

EDWIN B. CHILLINGWORTH,

Plaintiff-in-error.

Error from Circuit Court, Third Circuit, Honorable Martin Pence, presiding. (Violation of Section 11240, R.L.H. 1945, C. Nos. 2323 and 2413)

APPLICATION FOR WRIT OF ERROR

To the Clerk of the Supreme Court:

Please issue a Writ of Error in the above entitled case to the Clerk of the Circuit Court of the Third Judicial Circuit, Territory of Hawaii, on behalf of said Edwin B. Chillingworth, returnable to the Supreme Court.

Dated Honolulu, T. H., October 24, 1947.

/s/ EDWIN B. CHILLINGWORTH,  
Plaintiff-in-error.

[Endorsed]: Filed Oct. 27, 1947.

[49]



[Title of Supreme Court and Cause.]

## ASSIGNMENT OF ERRORS

Comes now Edwin B. Chillingworth, Plaintiff-in-error in the above-entitled matter, by his attorneys, King & McGregor, and assigns as grounds of reversal the following errors of the trial court:

### I.

That the Court erred in revoking the probation and suspension of sentence of Plaintiff-in-error in the above entitled cases, for the reason that the evidence adduced at the hearing on the motion for such revocation affirmatively revealed that Plaintiff-in-error had not violated any of the terms of his probation.

### II.

That the Court erred in revoking the said probation and suspension of sentence, for the reason that the said revocation was based upon a violation of the provisions of Section 11382, Revised Laws of Hawaii 1945, as set forth in the affidavit attached to the motion for revocation, and in the decision and judgment whereas said Section 11382 is not a penal statute of the Territory of Hawaii, or a statute capable of being violated. [51]

### III.

That the said revocation was an arbitrary exercise of judicial discretion.

### IV.

That the said revocation was an abuse of judicial discretion.

## V.

That the Court erred in revoking said probation in that the grounds set forth for said revocation were not of the character warranting such revocation.

## VI.

That the Court erred in revoking said probation in that there is no valid law of the Territory of Hawaii requiring any person to retain the hides of slaughtered cattle for any period of time.

## VII.

That the Court erred in said revocation for the reason that, in the trial for the violation of said Section 11382, for the conviction of which said revocation was ordered, the Plaintiff-in-error was deprived of rights guaranteed to him by the Constitution and laws of the United States of America.

Dated Honolulu, T. H., this 27th day of October, 1947.

EDWIN B. CHILLINGWORTH,

By KING & MCGREGOR,

By /s/ SAMUEL P. KING,

Attorneys for Plaintiff-in-error.

[Endorsed]: Filed Oct. 27, 1947.

[52]



[Title of Supreme Court and Cause.]

WRIT OF ERROR

Territory of Hawaii:

To the Clerk of the Circuit Court of the Third  
Judicial Circuit, Territory of Hawaii:

Application having been made on behalf of Edwin B. Chillingworth for a Writ of Error in the above entitled case, you are hereby commanded forthwith to send to the Supreme Court the record in the said case.

Witness the Honorable Samuel B. Kemp, Chief Justice of the Supreme Court, this 27th day of October, A. D., 1947.

(Seal)           /s/ LEOTI V. KRONE,  
Clerk, Supreme Court.

To the Clerk of the Supreme Court:

The execution of the within Writ of Error appears by the record hereto annexed.

Dated Hawaii, T. H., this 13th day of November, 1947.

(Seal)           /s/ A. S. CARVALHO,  
Clerk of the Circuit Court of the Third Judicial  
Circuit, Territory of Hawaii.

[Endorsed]: Filed Oct. 27, 1947.

[54]

In the Supreme Court of the Territory of Hawaii,

October Term, 1947

No. 2687

TERRITORY OF HAWAII,

vs.

EDWIN B. CHILLINGWORTH.

### MOTION TO DISMISS APPEAL

Argued June 16, 1948. Decided June 28, 1948.

Kemp, C. J., Peters and Le Baron, JJ.

### DECISION

Per Curiam. This is a criminal case in which the execution of the sentence imposed was suspended in part and the defendant placed on probation pursuant to the provisions of Revised Laws of Hawaii 1945, section 10843. While the defendant was on probation, the court having jurisdiction of the case under the power and authority reposed in it by Revised Laws of Hawaii 1945, section 10846, terminated the period of probation and proceeded to cause the sentence theretofore imposed to be executed. The defendant prosecuted error. The errors assigned are directed exclusively to a review of the order terminating probation.

The Territory moved to dismiss the writ of error upon the ground that it is only issuable out of the Supreme Court upon the application of a party

deeming himself aggrieved by a judgment of the Circuit Court in a criminal case to review the final judgment of sentence and that the order terminating the period of probation was an order made after the entry of the judgment of sentence and was not reviewable by writ of error. In our opinion, the motion is well-taken. [56]

In criminal cases a writ of error lies only to final judgment.<sup>1</sup> The provisions of the statute in respect to writs of error in criminal cases, quoted below<sup>2</sup> limits review upon writ of error to final judgment of sentence. Under its plain terms, orders after sentence are not reviewable. The provisions of law applicable to suspension of sentence and probation<sup>3</sup> make no provision for appeals from orders terminating probation. Whether the same are reviewable by any other method of appeal is not before

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<sup>1</sup> Perry, Common-law P1. p. 222; 1 Bishop's New Crim. Proc. § 1366, n. 7 and cases cited; § 1367, n. 1 and cases cited; see also *In re Apuna*, 6. Haw. 732; *In re Titcomb*, 9 Haw. 131; *In re Hoopsi*, 10 Haw. 610; *Ex parte Fugihara Oriemon*, 13 Haw. 102; *In re Gamaya*, 25 Haw. 414.

to writs of error in criminal cases, quoted below.<sup>2</sup>

<sup>2</sup> "Sec. 9551. Had when. A writ of error, returnable to the supreme court, may be issued by the clerk, or any deputy clerk or assistant clerk of the supreme court, upon the application of any party deeming himself aggrieved by the order or decree of a circuit judge at chambers, at any time before execution thereon is fully satisfied, within ninety days from the entry of which judgment, order or decree and the sentence of the court in a criminal case shall be the judgment."

<sup>3</sup> R.L.H. 1945, §§ 10843-10846.

us for decision. They are not subject to review by writ of error.<sup>4</sup> Under the circumstances, this court is without jurisdiction of the subject matter and the writ must be dismissed. It is so ordered.

T. Okino, County Attorney, County of Hawaii, and Acting Deputy Attorney General, for the motion.

R. F. Matsumura, contra.

By the Court:

/s/ LEOTI V. KRONE,  
Clerk.

Approved:

/s/ SAMUEL B. KEMP,  
Chief Justice.

/s/ E. C. PETERS,  
Associate Justice.

/s/ LOUIS LE BARON,  
Associate Justice.

[Endorsed]: Filed June 28, 1948.

[57]

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<sup>4</sup> Renado v. Lummus, 205 Mass. 155, 91 N. E. 144.

[Title of Supreme Court and Cause.]

JUDGMENT ON WRIT OF ERROR

In the above-entitled cause pursuant to the decision of the above-entitled court, rendered and filed on June 28, 1948, the writ of error is dismissed.

Dated Honolulu, T. H., June 29, 1948.

By the Court:

/s/ LEOTI V. KRONE,  
Clerk.

Approved June 29, 1948.

E. C. PETERS,  
Associate Justice.

I do hereby certify that the foregoing is a full, true and correct copy of the original, of the office of the clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., June 29, 1948.

(Seal)        /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

[Endorsed]: Filed June 29, 1948.

[58]

[Title of Supreme Court and Cause.]

NOTICE OF JUDGMENT ON WRIT  
OF ERROR

To Honorable Martin Pence, Judge of the Circuit  
Court of the Third Circuit, Territory of Hawaii:

You Will Please Take Notice that in the above-  
entitled cause the Supreme Court has entered the  
following judgment on writ of error:

“In the above-entitled cause pursuant to the  
decision of the above-entitled court, rendered  
and filed on June 28, 1948, the writ of error  
is dismissed.”

Dated Honolulu, T. H., June 29, 1948.

By the Court:

/s/ LEOTI V. KRONE,  
Clerk.

The form of the foregoing notice is hereby ap-  
proved, and It Is Ordered that the same issue  
forthwith.

Dated Honolulu, T. H., June 29, 1948.

E. C. PETERS,  
Associate Justice, Supreme Court, Territory of  
Hawaii.

[Endorsed]: Filed June 29, 1948.

[59]

[Title of Supreme Court and Cause.]

ORDER RECALLING MANDATE

This matter having come on for hearing upon the application of the Defendant and Plaintiff in Error and good cause appearing therefor,

It Is Hereby Ordered that the Mandate heretofore issued on the 29th day of June, 1948, to the Circuit Court of the Third Judicial Circuit, Territory of Hawaii, be and the same is hereby recalled.

Witness the Honorable S. B. Kemp, Chief Justice of the Supreme Court of the Territory of Hawaii, this 3rd day of July, 1948.

/s/ S. B. KEMP,  
Chief Justice.

Attest:

(Seal) /s/ GUS K. SPROAT,  
Clerk of the Supreme Court of the Territory of Hawaii.

[Endorsed]: Filed July 3, 1948.

[61]



[Title of Supreme Court and Cause.]

Wednesday, June 16, 1948

### ARGUMENT

The Court: Chief Justice Samuel B. Kemp, Associate Justices Emil C. Peters, Louis Le Baron. Mrs. Leoti V. Krone, Clerk.

Counsel: Tom Okino, Esq., County Attorney of Hawaii County, and Deputy Attorney General, for Territory, defendant-in-error. Ralph F. Matsumura, Esq., for plaintiff-in-error.

Court convened at ten o'clock a.m. on the above date, for argument in the above case, whereupon the said cause was called for argument.

Counsel for plaintiff in error announced that he would submit his case upon the opening brief but that if there was argument by the Territory he would ask leave to have five days within which to file a supplemental brief. The chief justice stated that his request would be held in abeyance until the court heard from counsel for the defendant in error.

Mr. Okino, attorney for the Territory, defendant in error, filed a motion to dismiss the writ of error on the ground that a writ of error does not lie to review an order revoking probation. He then proceeded to argue the motion to dismiss, concluding his argument at 10:24 o'clock a.m. He thereupon waived oral argument on the merits.

Mr. Matsumura, attorney for the plaintiff in error, waived argument on the motion to dismiss,

as well as upon the merits of the case, and submitted his case upon the briefs.

Court adjourned at 10:30 o'clock a.m., until tomorrow.

/s/ LEOTI V. KRONE,  
Clerk.

Copy of Affidavit of Prejudice produced in No. 2710, Chillingworth vs. Pence et al, at argument June 7, 1948, filed in this record. [62]

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[Title of Supreme Court and Cause.]

### PETITION FOR APPEAL

Comes now Edwin B. Chillingworth, Petitioner, by his attorney, and deeming himself aggrieved by the judgment of this court made and entered in the above entitled cause on June 28, 1948, pursuant to the Court's opinion filed on June 28, 1948, dismissing his Writ of Error, prays that an appeal may be allowed from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; that an order be made fixing the amount of cost bond that said Petitioner shall give and that the Clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Circuit

Court of Appeals for the Ninth Circuit a transcript of the record, proceedings, exhibits and papers duly authenticated.

Dated at Honolulu on 2nd day of July, 1948.

/s/ RALPH F. MATSUMURA,  
Attorney for Petitioner. [64]

Territory of Hawaii,  
City and County of Honolulu—ss.

Ralph F. Matsumura, being first duly sworn on oath, deposes and says that he is the attorney for the Petitioner above named, that he has read the foregoing petition, knows the contents thereof, and that the same is true.

/s/ RALPH F. MATSUMURA,

Subscribed and sworn to before me this 2nd day of July, 1948.

/s/ T. OKALA,  
Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires July 22, 1949.

(Acknowledgment of Service attached.)

[Endorsed]: Filed July 2, 1948. [65]

[Title of Supreme Court and Cause.]

## ASSIGNMENTS OF ERROR

### I.

That the Court erred in dismissing Petitioner's Writ of Error, for lack of jurisdiction in that said Court does have jurisdiction of said cause.

### II.

That the Court erred in dismissing Petitioner's Writ of Error in that the "Decision and Judgment" of the Circuit Court of the Third Circuit, Territory of Hawaii, dated and filed on July 30, 1947, from which appeal by Writ of Error was taken, was a "judgment of a Circuit Court" within of the meaning of Section 9551, R.L.H. 1945, governing Writs of Error.

### III.

That the Court erred in dismissing Petitioner's Writ of Error in that the "Decision and Judgment" of the Circuit Court of the Third Circuit, Territory of Hawaii, dated and filed on July 30, 1947, from which appeal by Writ of Error was taken, was a "sentence of the court" within the meaning of Section 9551, R.L.H. 1945, governing Writs of Error. [66]

### IV.

That the Court erred in dismissing the Petitioner's Writ of Error, for the reason that if the Writ does not lie, Sections 10843 through 10486, R.L.H. 1945, relating to probation and suspension, are unconstitutional in that they provide no method

of Appeal from the judgments and/or orders of the Circuit Court and are thus unreasonable and arbitrary in their application to him, depriving him of due process of law.

Wherefore, Petitioner Edwin B. Chillingworth prays that the judgment of the Supreme Court of the Territory of Hawaii, entered in the above cause on the 28th day of June, 1948, be reversed, and for such other and further relief as may be proper.

/s/ RALPH F. MATSUMURA,  
Attorney for Petitioner.

[Endorsed]: Filed July 2, 1948.

[67]

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[Title of Supreme Court and Cause.]

### COST BOND

Know All Men By These Presents:

That Edwin B. Chillingworth, as principal, and James K. Parker and Ira K. Hutchinson as sureties, are held and firmly bound unto the Territory of Hawaii in the just and full sum of Two Hundred Fifty Dollars (\$250.00), legal currency of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that:

Whereas, the above bounden principal, Edwin B. Chillingworth, has filed his Petition for Appeal

from the Supreme Court of the Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of said Supreme Court entered on June 28, 1948.

Now, Therefore, if said principal shall prosecute his appeal with effect and answer for all costs, if he fails to sustain said appeal, then this obligation shall be void, otherwise it remains in full force and effect. Sealed with our seals and dated at Honolulu, Territory of Hawaii, on July 1, 1948.

/s/ EDWIN B. CHILLINGWORTH,  
Principal.

/s/ JAMES K. PARKER,  
Surety.

/s/ IRA K. HUTCHINSON,  
Surety.

### AFFIDAVIT OF SURETIES

Territory of Hawaii,  
City and County of Honolulu—ss.

James K. Parker and Ira K. Hutchinson sureties on the foregoing bond, being first duly sworn on oath, depose and say that they are residents of the City and County of Honolulu, Territory of Hawaii, and are each more than twenty years of age; that they have property situate within the Territory of Hawaii subject to execution; and that they are, each and not together, worth the sum of \$250.00 in such property situate within said

Territory of Hawaii over and above all their debts and liabilities and property exempt from execution.

/s/ JAMES K. PARKER,

/s/ IRA K. HUTCHINSON.

Subscribed and sworn to before me this 2nd day of July, 1948.

/s/ RALPH F. MATSUMURA,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission expires April 25, 1952.

The foregoing bond is hereby approved as to form, amount and sufficiency of Sureties.

/s/ SAMUEL B. KEMP,

Chief Justice, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed July 2, 1948.

[69]

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[Title of Supreme Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING  
AMOUNT OF BOND

Upon reading and filing in open court the petition of Edwin B. Chillingworth, petitioner above named, in which he prays that an appeal may be allowed from the judgment of this Court entered in the above entitled cause on the 28th day of June, 1948, to the United States Circuit of Appeals



for the Ninth Circuit, and upon said petitioner filing an Assignment of Errors together with said Petition and together with a Bond for Costs in the sum of Two Hundred Fifty Dollars (\$250.00).

It Is Hereby Ordered that said appeal be and it is hereby allowed; that the bond for costs in the sum of \$250.00 filed by said Edwin B. Chillingworth be and is hereby approved; and that said Petition for Appeal, Assignment of Errors, and Bond for Costs were filed in open court on the 2nd day of July, 1948, after the filing of said judgment; and this Order is now made allowing said appeal, all in open court in the Supreme Court of the Territory of Hawaii.

Dated Honolulu, T. H., July 2nd, 1948.

/s/ SAMUEL B. KEMP,

Chief Justice of the Supreme Court of the Territory of Hawaii.

[Endorsed]: Filed July 2, 1948.

[70]

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[Title of Supreme Court and Cause.]

### CITATION

The United States—ss.

The President of the United States to Appellee and to its attorney Tom Okino, County Attorney of the County of Hawaii, Territory of Hawaii.

You are hereby cited and admonished to appear before the United States Circuit Court of Appeals

for the Ninth Circuit in the City of San Francisco, State of California, within forty (40) days from the date of this Citation pursuant to an appeal duly allowed and filed in open court by the Supreme Court of the Territory of Hawaii on the 2nd day of July, 1948, in the above entitled cause wherein Edwin B. Chillingworth is Appellant, and you, Territory of Hawaii, are Appellee, to show cause, if any, why the final judgment rendered against the said Edwin B. Chillingworth on June 28, 1948, should not be corrected and why speedy justice should not be made to the Petitioner in their behalf.

Witnesseth Samuel B. Kemp, Chief Justice of the Supreme Court of the Territory of Hawaii, this 2nd day of July, 1948.

/s/ SAMUEL B. KEMP,  
Chief Justice of the Supreme Court of the Territory of Hawaii.

Attest:

(Seal) /s/ GUS SPROAT,  
Clerk, Supreme Court of the Territory of Hawaii.

[Endorsed]: Filed July 2, 1948.

[71]

[Title of Supreme Court and Cause.]

## PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above Entitled Court:

You will please prepare a transcript of the record of this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit and include in said transcript the following pleadings and papers on file, to-wit:

1. The record on appeal from the Third Circuit Territory of Hawaii, other than the transcript of the testimony and the exhibits;

2. Defendant and Plaintiff-in-Error's Petition for a Writ of Error to the Third Circuit Court, Territory of Hawaii;

3. Defendant and Plaintiff-in-Error's Assignment of Errors accompanying the foregoing;

4. Writ of Error to the Third Circuit Court, Territory of Hawaii;

5. Decision of the Supreme Court of the Territory of Hawaii, dated the 28th day of June, 1948; [73]

6. Judgment on Writ of Error made and entered the 28th day of June, 1948;

7. Notice of Judgment on Writ of Error filed the 28th day of June, 1948;

8. Order Recalling Mandate;

9. Minutes of the proceedings before the Supreme Court of the Territory of Hawaii.

10. Petition for Appeal;

11. Notice of Appeal and Order Allowing Appeal;

12. Assignment of Errors;
13. Citation on Appeal;
14. Bond for Costs on Appeal;
15. This Praeceptum;
16. Clerk's Certificate of the Transcript;

Said transcript to be prepared as required by law, and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the Office of the Clerk of said Circuit Court of Appeals, at San Francisco, in the State of California, before the 7th day of August, A. D. 1948.

Dated at Honolulu, Hawaii, this 23rd day of July, 1948.

EDWIN B. CHILLINGWORTH,  
Defendant-Appellant.

By /s/ RALPH F. MATSUMURA,  
His Attorney.

[Endorsed]: Filed July 24, 1948.

[74]

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[Title of Supreme Court and Cause.]

### ORDER EXTENDING TIME

Good cause appearing therefor, the time during which the Defendant-Appellant may file the records and exhibits specified in his Praeceptum, dated July 23, 1948, in the office of the Clerk of the

United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to include the 29th day of September, 1948.

/s/ S. B. KEMP,

Chief Justice of the Supreme Court.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Aug. 5, A. D. 1948.

(Seal)

LEOTI V. KRONE,

Clerk, Supreme Court, Territory of Hawaii.

[Endorsed]: Filed Aug. 5, 1948.

[74]

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[Title of Supreme Court and Cause.]

## SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the Supreme Court of the Territory of Hawaii, do hereby certify that the foregoing documents listed in the index hereto attached are full, true and correct copies of the certified copies and of the originals on file in the above-entitled court and cause, and so indicated in said index.

I Further Certify that the cost of the foregoing

transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit is \$90.00, and that the said amount has been paid by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, this 26th day of August, 1948.

(Seal)            /s/ LEOTI V. KRONE,  
Clerk.

[75]

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[Endorsed]: No. 12043. United States Court of Appeals for the Ninth Circuit. Edwin B. Chillingworth, Appellant, vs. Territory of Hawaii, Appellee. Transcript of Record. Appeal from the Supreme Court for the Territory of Hawaii.

Filed September 23, 1948.

                  /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 12043

TERRITORY OF HAWAII,

Defendant-in-Error,

vs.

EDWIN B. CHILLINGWORTH,

Plaintiff-in-Error.

(Error to Circuit Court, Third Circuit, Territory  
Haw., Hon. Martin Pence, Judge, Cr. Nos. 2323  
and 2413) Appeal from Supreme Court, Terri-  
tory of Hawaii. No. 2687.

STATEMENT OF POINTS AND DESIGNA-  
TION OF PARTS OF RECORD

Comes now Edwin B. Chillingworth, Appellant herein, by and through his attorney, Ralph F. Matsumura, and in compliance with Subdivision 6 of Rule 19 requiring a concise statement of the points on which Appellant intends to rely on the appeal, hereby adopts as the points on appeal the assignment of errors appearing in the transcript of the record, and in compliance with the rules of this Court pertaining to the designation of the portion of the record to be printed, directs that the entire record on appeal as set forth in the Praeceptum heretofore filed with the Clerk of the Supreme Court



of the Territory of Hawaii with the request that copies of the record as so designated be prepared and transmitted to this Court, be printed as the record on review.

Dated Honolulu, T. H., this 31st day of August, 1948.

/s/ RALPH F. MATSUMURA,  
Attorney for Appellant.

Service of a copy of the foregoing Statement of Points and Designation of Parts of Record is hereby admitted this 1st day of September, 1948.

/s/ TOM OKINO,  
Attorney for Appellee.

[Endorsed]: Filed September 23, 1948. Paul P. O'Brien, Clerk.